

**Letter of Findings Number: 02-20110026P  
Tax Administration  
For Tax Year 2009**

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**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer failed to timely remit its fourth quarter estimated tax payment for the fiscal year ending June 30, 2009. The Indiana Department of Revenue ("Department") imposed a ten percent penalty. Taxpayer protests the imposition of penalty. This Letter of Findings was written based on a telephone hearing and on the information found in the protest file. Further facts will be presented as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Department issued a proposed assessment for penalty regarding the tax year in question due to Taxpayer's failure to timely remit a quarterly estimated tax payment. Taxpayer protests the imposition of penalty and requests a waiver of that penalty. Taxpayer states that personnel turnover resulted in a failure to make that particular payment. Also, Taxpayer states that it agrees that it owes the base tax but that it made an overpayment for another tax period and requests that the overpayment in that instance be applied to this liability.

IC § 6-3-4-4.1 provides in pertinent parts:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

(e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability.

(Emphasis added).

Since IC § 6-3-4-4.1(d) makes direct reference to IC § 6-8.1-10-2.1(b), the Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(a) If a person:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

In this case, Taxpayer failed to remit a required estimated quarterly payment and so the Department determined that Taxpayer was subject to a penalty under IC § 6-3-4-4.1(d), which in turn refers to IC § 6-8.1-10-2.1(b). A review of the Department's records establishes that Taxpayer has had other tax remittance issues besides the one under protest. When this is considered with the fact that Taxpayer failed to timely make its estimated fourth quarter payment as required by IC § 6-3-4-4.1, Taxpayer has not affirmatively established that its failure to timely file its quarterly estimated tax return was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). Regarding Taxpayer's request to apply an overpayment from another tax period to this liability, a Letter of Findings is not the appropriate forum for determining such applications.

#### **FINDING**

Taxpayer's protest is denied.

*Posted: 09/28/2011 by Legislative Services Agency*

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